UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE ENRON CORPORATION SECURITIES LITIGATION	)	No. H-01-3624
	)	
	)	Hon. Melinda Harmon

DEFENDANT ANDERSEN WORLDWIDE SOCIETE COOPERATIVE'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS THE CONSOLIDATED COMPLAINT

Defendant Andersen Worldwide Societe Cooperative ("AWSC"), by its attorneys, respectfully submits this memorandum in support of its motion to dismiss the Consolidated Complaint ("the Complaint").

INTRODUCTION

AWSC is a Swiss Societe Cooperative formed under the Swiss Code of Obligations and domiciled in Geneva, Switzerland. AWSC coordinates the activities of other distinct legal entities around the world, including Arthur Andersen LLP ("Andersen LLP"), that have contracted to participate in the Andersen network. Plaintiffs do not allege, nor could they, that AWSC itself provided any professional services to Enron, let alone provided services that were deficient in any way. Although Andersen LLP was the auditor for Enron, and it is Andersen LLP's work that the Complaint attacks, plaintiffs nevertheless have named AWSC as a defendant in the Complaint, seeking to hold AWSC liable under Section 11 of the Securities Act of 1933 and under Section 10(b) of the Securities Exchange Act of 1934. Plaintiffs do not bother, however, to allege that AWSC made any misrepresentation regarding Enron.

Plaintiffs attempt to obscure that fatal deficiency in their complaint in two ways. First, plaintiffs lump together seven separate Andersen entities and twenty-four individuals, call them all collectively "Andersen," and then make allegations about Andersen LLP's audit work

for Enron. That group pleading practice is inappropriate, and this Court has recognized that such allegations are insufficient under the Public Securities Litigation Reform Act ("PSLRA") to support a claim for a violation of the securities laws. Second, plaintiffs allege that "Andersen" is "one firm" and that all parts of that "firm" are liable for the actions of any of the individual parts. The allegations of the complaint, however, even if true, would not establish the existence of any legal entity that included Andersen LLP, AWSC, all of the member firms (those accounting firms around the world that have contractual relationships with AWSC by virtue of member firm interfirm agreements), and each of the partners of any of those firms. Every court that has considered such a claim of "worldwide partnership" for "Big Five" firms such as Andersen LLP has rejected it, and plaintiffs have alleged no facts that would make this case any different. Accordingly, the Complaint does not adequately allege any of the elements of a claim against AWSC under either Section 10(b) or Section 11, and the Complaint should be dismissed as to AWSC for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. In addition, this Court as a matter of comity should decline to exercise jurisdiction over AWSC. As a Swiss cooperative society domiciled in Switzerland, the Swiss courts would not recognize this Court's exercise of jurisdiction over AWSC.

FACTUAL BACKGROUND

Despite the length of the Complaint, plaintiffs' allegations regarding AWSC are sparse. The Complaint asserts that "Andersen" (defined as every Andersen-related entity named in the Complaint) "served Enron as an integrated part of a global enterprise." (Cmplt. ¶ 897.) The Complaint asserts that Andersen (including AWSC) "operates as a single global partnership or joint venture." (Cmplt. ¶ 971.) But the allegations that follow make no effort to establish the elements of such an entity.

Plaintiffs allege that the structure of the worldwide organization was designed to maintain a "one firm" concept and to "foster the belief that Andersen operates as a single entity." (Id.) The Complaint asserts that "Andersen-Worldwide" is the "instrumentality" through which the "one firm" concept is accomplished so that "member firms' practices shall be correlated and coordinated on an international basis." (Cmplt. ¶ 973.) The Complaint does not allege, however, that AWSC provides any professional services to clients anywhere in the world and concedes that every member firm enters into a separate Member Firm Inter Firm Agreement ("MFIFA") with AWSC.[1] (Id.) According to the Complaint, AWSC's "coordination" is achieved through (a) the fact that the partners of AWSC also are partners (or the equivalent) in the member firms; (b) "the sharing of costs and allocation of revenues and profits" among the member firms;[2] (c) global setting of professional standards by AWSC; and (d) an infrastructure and administration by which AWSC assists with borrowing by member firms, maintains financial records, payroll and employee and health benefits for member firms, and shares global computer operations, a worldwide tax structure and training facilities. (Id.) The Complaint asserts that AWSC "manages, directs and controls its international offices" through the use of "practice directors" and "managing partners" in various regions (Cmplt. ¶¶ 975-977), and that AWSC and Andersen

[1] The Complaint also asserts that the Federal Election Committee concluded that AWSC "entered into" member firm agreements with Andersen Consulting and Arthur Andersen LLP, who were "thereby subject to coordination and limited governance" by AWSC and that "[s]uch an arrangement may have been, in some way, akin to the relationship of subsidiaries of the same parent entity, although neither partnership was owned by the AWSC." (Cmplt. ¶ 972.)

[2] The Complaint asserts (erroneously) that "fees from Enron were distributed directly and indirectly around the world." Plaintiffs also makes allegations about "profit-sharing," claiming that profits were shared globally. (Cmplt. ¶ 973.) To support the allegation that "Andersen" operates "financially" as "one firm," plaintiffs simply describe how the total revenues of the various firms break down by region (e.g., 44% from North America, 33% from Europe, Middle East, India and Africa, 13% from Asia/Pacific and 10% from Latin America). (Cmplt. ¶ 982.)

LLP share office space in the United States. (Cmplt. ¶ 980.) The Complaint does not allege that AWSC shares in the profits of any member firm.

The Complaint further alleges that "Andersen" held itself out in marketing and promotional materials and on its website as a "single worldwide organization." (Cmplt. ¶ 974.) Plaintiffs assert that AWSC's "promotional literature," including its website and new releases, markets "Andersen-Worldwide" as "one firm." (Cmplt. ¶¶ 971, 974, 981.) According to plaintiffs, (unspecified) correspondence, e-mails, and logos alternatively read "Andersen," "Arthur Andersen," or "Andersen Worldwide." (Cmplt. ¶ 981.) Plaintiffs make no allegation regarding any such marketing efforts related to Andersen LLP's work for Enron. Moreover, plaintiffs make no allegation that they saw or relied on any of these representations.

Thus, the Complaint essentially alleges that the worldwide organization is composed of numerous separate firms whose professional practices are coordinated by AWSC through an infrastructure, common professional standards, sharing of costs and revenues, and a marketing plan that seeks to promote the benefits to clients from such coordinated efforts.

ARGUMENT

I. Personal Jurisdiction

The Complaint should be dismissed because this Court lacks personal jurisdiction over AWSC. AWSC is a Swiss cooperative formed under the Swiss Code of Obligations, and as such is domiciled and has its residence in Switzerland. Pursuant to Articles 26, 149, and 165 II of the Swiss Federal Act on International Private Law, a Swiss court would not recognize this Court's exercise of jurisdiction over AWSC.[3] Because a Swiss court would not recognize this

[3] Article 26 provides that:

Foreign authorities have jurisdiction:

Court's exercise of jurisdiction over AWSC, this Court should decline to exercise personal jurisdiction over AWSC out of respect for the foreign law that created AWSC.

The Supreme Court has noted that courts should exercise "[g]reat care and reserve ... when extending our notions of personal jurisdiction into the international field." Asahi Metal Indus. Co., Ltd. v. Superior Court of California, 480 U.S. 102, 115 (1987) (quotation omitted). For when United States courts seek to exercise personal jurisdiction over foreign entities, the courts inject themselves into the sensitive area of federal foreign relations policy. Thus, "careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case, and an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum" is necessary. These considerations point toward according due respect to the law of Switzerland, the jurisdictional law that created AWSC and that is its home.

Swiss law does not recognize this Court's jurisdiction over AWSC. Article 26 of the Swiss Private International Law Act ("Act") provides the starting point for determining Switzerland's position concerning this Court's jurisdiction. Article 26 provides for jurisdiction if AWSC consents to this Court's jurisdiction (Art. 26(c) (a foreign court has jurisdiction if the

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> (a) if jurisdiction derives from a provision of this Act or, failing such a provision, if the defendant was domiciled in the state in which the decision was rendered;
> (b) if, in matters involving an economic interest, the parties submitted to the jurisdiction of the authority that rendered the decision by means of an agreement valid under this Act;
> (c) if, in matters involving an economic interest, the defendant proceeded on the merits without reservation; or
> (d) if, in the case of a counterclaim, the authority that rendered the decision had jurisdiction to entertain the main claim and if there is a nexus between the claim and the counterclaim.

For the Court's convenience, AWSC has attached as Exhibit A to this memorandum an official translation of the relevant provisions of the Swiss Private International Law Act.

defendant "proceeded on the merits without reservation")), if AWSC had provided for resolution of this dispute in a specific agreement (Art. 26(b)), or if another provision of Swiss law provides for this Court's jurisdiction (Art. 26(a)). Clearly AWSC has not consented to this Court's jurisdiction, either today (it is contesting jurisdiction) or in any agreement that is the subject of this dispute. Thus, the only possible basis of jurisdiction is some other provision of Swiss law.

Both Article 149 and Article 165 of the Act provides that this Court would have jurisdiction if AWSC were either a domiciliary or a "habitual residen[t]" of Texas (the state in which this Court sits). AWSC is neither. Because AWSC is a Swiss cooperative formed under the Swiss Code of Obligations, it is domiciled and has its residence in Switzerland. The Articles provide for other potential bases of jurisdiction, but all potentially applicable bases depend on AWSC not being a domiciliary of Switzerland. (See Art. 149(f), Art. 165(a).) As already stated, because AWSC is a Swiss cooperative formed pursuant to Swiss law, it is a Swiss domiciliary and resident. This Court, therefore, lacks jurisdiction.

II. The Complaint Does Not State A Claim Against AWSC.

A. The Complaint Does Not Allege Any of the Elements of a Section 11 or Section 10(b) Claim as to AWSC.

The Complaint asserts claims against AWSC pursuant to Section 10(b) of the Securities Exchange Act of 1934 (see Cmplt. ¶ 993), and Section 11 of the Securities Act of 1933 (see Cmplt. ¶ 1006).[4] To support a claim under either Section 10(b) or Section 11, plaintiffs must allege, inter alia, that the defendant made a material misstatement or omission. See Mercury Air Group, Inc. v. Mansour, 237 F.3d 542, 546 (5th Cir. 2001) (Section 10(b));

[4] Although these paragraphs also allege violations of Section 20(a) of the Securities Exchange Act and Section 15 of the Securities Act, an earlier paragraph makes clear that only four defendants – none of whom are AWSC – are "named as control persons of Andersen pursuant to §20(a) of the 1934 Act and §15 of the 1933 Act." (Cmplt. ¶ 96.) In any event, the Complaint does not contain any allegations that would support such an allegation.

Herman & MacLean v. Huddleston, 459 U.S. 375, 381-82 (1983) (Section 11). The PSLRA imposes stringent requirements on pleading such allegations, even above and beyond those required by Rule 9(b) of the Federal Rules of Civil Procedure – the Complaint must "specify each statement alleged to have been misleading, [and] the reason or reasons why the statement is misleading . . . ." 15 U.S.C. § 78u-4(b)(1). Plaintiffs have not even attempted to satisfy these requirements. Plaintiffs have failed to include any allegation that AWSC made any statements or omissions, let alone actionable ones.

Plaintiffs' failure to allege any misrepresentations or omissions by AWSC results in other obvious pleading failures. With respect to their 10(b) claims, plaintiffs obviously cannot allege materiality, scienter, or loss causation with respect to representations that were never made. See Mercury Air, 237 F.3d at 546. Moreover, given that the Complaint contains no allegations that AWSC acted at all as to Enron, the Complaint is devoid of any allegation that AWSC acted with anything approaching recklessness. Similarly, with respect to their Section 11 claims, plaintiffs cannot allege that any "misleading data can be expressly attributed" to AWSC. McFarland v. Memorex Corp., 493 F. Supp. 631, 643 (N.D. Cal. 1980). Thus, the Complaint is plainly deficient as to AWSC.

B. The Complaint Does Not Adequately Allege That AWSC Is Liable for the Actions of Andersen LLP.

Plaintiffs attempt to cure that deficiency by asserting that AWSC is liable for the actions of Andersen LLP, which audited Enron's financial statements. But it is axiomatic that AWSC can be liable only for its own material misrepresentations or omissions; there is no secondary liability under the federal securities laws. See Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A., 511 U.S. 164, 191 (1994). Plaintiffs attempt to circumvent this

principle first by crudely lumping numerous entities under the defined term "Andersen," and second by asserting that all of those entities constitute "one firm." Neither attempt is successful.

1. Plaintiffs Cannot Rely on "Group Pleading" to State a Claim Against AWSC.

The only allegedly false or misleading statements purported even to have been made by "Andersen" are the 1997, 1998, 1999, and 2000 audit reports, which state: "In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Enron Corp. and its subsidiaries ...." (Cmplt. ¶¶ 903-905.) Plaintiffs do not allege that AWSC, or even "Andersen-Worldwide," made these statements, because they cannot do so. In fact, each audit report was signed and issued solely by Arthur Andersen LLP, not "Andersen," much less AWSC. (See Audit Reports, attached as Exhibit B.)[5]

Plaintiffs seek to obscure the facts that lead to this conclusion by lumping together seven individual entities and twenty-four individual persons and referring to them "collectively" as "Andersen." (Cmplt. ¶ 1(b).) This effort is patently deficient; it constitutes an improper attempt to take advantage of the dead letter "group pleading presumption," by which an entity's statements could at one time "be presumed to be the collective work of those individuals with direct involvement in the everyday business" of that entity. See In re Sec. Litig. BMC Software, Inc., 183 F. Supp. 2d 860, 902 n. 45 (S.D. Tex. 2001) (Harmon, J.). As this Court has recently concluded, however, "the group pleading doctrine is at odds with the PSLRA and has

[5] Pursuant to Rules 10(c) and 12(b)(6) of the Federal Rules of Civil Procedure, this Court may consider the audit reports for purposes of this motion to dismiss, because they are "referred to in the plaintiff's complaint and are central to [plaintiffs'] claim." Collins v. Morgan Stanley Dean Witter, 224 F.3d 496, 499 (5th Cir. 2000) (quoting Venture Assocs. Corp. v. Zenith Data Sys. Corp., 987 F.2d 429, 431 (7th Cir. 1993)).

not survived." Id.[6] Accordingly, AWSC need not answer for plaintiffs' many allegations against "Andersen."

2. The Allegations of the Complaint Conclusively Demonstrate that AWSC Is Not Liable as Part of "One Firm" that Includes Andersen LLP.

The Complaint also unsuccessfully attempts to state a claim against AWSC for liability arising from Andersen LLP's representations on the theory that both are simply part of "one firm." Plaintiffs assert that the firm to which they refer is a partnership. But plaintiffs have pleaded themselves out of court as to a partnership theory by alleging facts that affirmatively demonstrate that AWSC is not a "single global partnership." (See Cmplt. ¶ 971.) The Complaint asserts correctly that AWSC is a "Societe Cooperative organized under the Swiss Federal Code of Obligations." (Cmplt. ¶ 92(a).) Title 29 of the Swiss Code defines the nature of a Societe Cooperative, and other portions of the Swiss Code define distinct entities, including Ordinary Partnerships, General Partnerships, and Limited Partnerships. See Swiss Federal Code of Obligations, Titles 23-25, 29 (attached as Exhibit C). The Texas Revised Partnership Act expressly excludes from the definition of a "partnership" organizations that are codified under foreign law as entities other than partnerships: "[a]n association or entity created under a law other than the laws described in Subsection (a) [which include the Act itself, the Texas Uniform Partnership Act, The Texas Revised Limited Partnership Act or any "comparable" Act]." Tex.

[6] Any other conclusion would yield absurd results. For example, plaintiffs' allegation that "Andersen was formed in Illinois in 1913" (Cmplt. ¶ 971) cannot possibly mean that AWSC was so formed, or that Andersen-United Kingdom was so formed, or that any of the twenty-four individuals who are also referred to as "Andersen" were so formed.

Stat. Ann. Art. 6132b-2.02(b).[7] AWSC, as a Societe Cooperative formed under the Swiss Code, plainly falls into this excluded category.[8] Accordingly, AWSC cannot be held to be a partnership at all, let alone one that includes Andersen LLP, which is a partnership formed under an Act comparable to the Texas Uniform Limited Partnership Act.[9]

3. The Complaint Does Not Adequately Allege that AWSC is Liable as Part of "One Firm" that Includes Andersen LLP.

Moreover, the Complaint suggests four ways in which a "one firm" concept is purportedly achieved, but none of those allegations suggests the existence of a partnership. (Cmplt. ¶ 973.)[10] Plaintiffs first suggest that the "partner overlap" between AWSC and its member firms is indicative of partnership, but its allegations belie this suggestion. (See Cmplt. ¶ 973(a).) These "partners," are not alleged to have entered into any partnership agreement to bind them together. Instead, the member firms and their "practice partners" are each alleged to have

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[7] The Uniform Partnership Act contains a provision that has substantially the same effect, excluding from its reach any "association formed under a statute other than this [Act], a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this [Act]." UPA § 202(b).

[8] Similarly, all of the Andersen member firms from foreign jurisdictions that are partnerships formed under the laws of those jurisdictions are not part of a partnership under United States law.

[9] Plaintiffs' efforts to include entities other than AWSC in some "global partnership" fare no better. Plaintiffs curiously attempt to "define" AWSC as something more than the Societe Cooperative; they also allege it to be: "Andersen-Worldwide," being "comprised of Societe Cooperative, Switzerland, a partnership organized under the Swiss Federal Code of Obligations, the AWO member firms and the partners of AWSC." (Cmplt. ¶ 92(a).) But even allegations against "Andersen-Worldwide" appear in but a handful of paragraphs (see Cmplt. ¶¶ 91-93, 897, 971-981), and none of those allegations suggests that "Andersen-Worldwide," much less AWSC, made any actionable representation.

[10] Although this Court must assume the allegations in the Complaint are true for purposes of this motion to dismiss, AWSC does not concede the truth of these allegations. To the contrary, these allegations – insufficient though they are – paint an inaccurate picture of AWSC's structure and its relationship with the member firms.

entered into separate member firm interfirm agreements with AWSC. (Id.) These allegations amount to a series of contractual relationships. They do not create a partnership.[11]

Plaintiffs' other allegations suggest that AWSC is an administrative body, not a partnership. The allegations concerning the "sharing of costs and profits" are not only insufficient, but also are inaccurate by their very terms. (Cmplt. ¶ 973(b).) Plaintiffs can allege only that AWSC "coordinates the sharing of costs and allocation of revenues" (Cmplt. ¶ 973(b) (emphasis added)), not that AWSC engages in the actual sharing of profits or losses that might provide some indicia of partnership. See Tex. Stat. Ann. Art. 6132b-2.03(a)(1),(4). Plaintiffs' other allegations – regarding the "global setting of professional standards" and "infrastructure and administration" also suggest functions that have nothing to do with AWSC's legal status or the legal status of the member firms that make up the worldwide organization. (See Cmplt. ¶¶ 973(c),(d).) These allegations are not the equivalent of the "control" required to suggest the existence of a partnership. See Tex. Stat. Ann. Art. 6132b-2.03(a)(3).

Similarly, plaintiffs' allegations concerning marketing and logos (see Cmplt. ¶¶ 974, 981) are not sufficient to demonstrate the existence of a partnership. See, e.g., Howard v. Klynveld Peat Marwick Goerdeler, 977 F. Supp. 654, 662-63 (S.D.N.Y. 1997) (dismissing allegations of "public relation materials suggest[ing that KPMG] is a global firm or an international network of member firms" because they do not support "a legal finding of partnership"); Reingold v. Deloitte Haskins & Sells, 599 F. Supp. 1241, 1254 n.10 (S.D.N.Y.

[11] The allegations regarding the "member firms" illustrates a fundamental flaw in any partnership theory – each of these member firms are creations of the laws of their jurisdictions. Plaintiffs cannot point to any law that would establish any unified organization that would give rise to liability. This failure is unsurprising, as the definition of such an entity would be necessarily vague. For example, if "Andersen-Worldwide" were to be a "global partnership," would it be a general partnership or a limited partnership? How would the rights and obligations of any "global partners" be defined?

1984) (references in "brochures and pamphlets describing DH&S (U.S.) in terms such as 'a single cohesive organization'" insufficient to establish a global partnership). Plaintiffs' allegations that AWSC and Andersen LLP share "the same address" (Cmplt. ¶ 980) do not even constitute an allegation of "co-ownership of property," which itself would be insufficient to suggest the existence of a partnership. See Tex. Stat. Ann. Art. 6132b-2.03(b)(2).[12]

Plaintiffs' allegations are thus no more than an assertion that a common name and marketing strategy, coupled with an administrative coordinating body that facilitates a working relationship among the member firms – defined by separate contracts – dictates that there must be a single worldwide "Andersen" entity for all legal purposes. Arguments of this nature have been routinely rejected. Courts have consistently held that bald allegations of the "worldwide" nature of an accounting firm do not satisfy plaintiffs' pleading obligations under Rule 9(b) and the Reform Act. In Cromer Finance Ltd. v. Berger, 137 F. Supp. 2d 452 (S.D.N.Y. 2001), for example, the court dismissed Section 10(b) claims against Ernst & Young International despite allegations that "Ernst & Young operated as a global, financially interdependent enterprise and that EYI provided executive management and strategic direction for its members," because "there was no reference to EYI in the documents in which the false statements were contained."

[12] Plaintiffs also allege that a Federal Election Committee Advisory Committee concluded that AWSC "entered into" member firm agreements with Andersen Consulting and Arthur Andersen LLP, who were "thereby subject to coordination and limited governance" by AWSC and that "[s]uch an arrangement may have been, in some way, akin to the relationship of subsidiaries of the same parent entity, although neither partnership was owned by the AWSC." (Cmplt. ¶ 972.) As an initial matter, this hearsay allegation fails to meet the requirements of Rules 9(b) and 11 and therefore cannot be credited. See Geinko v. Padda, No. 00 C 5070, 2002 WL 276236, *6 (N.D. Ill. Feb. 27, 2002) (dismissing complaint because "[p]laintiffs' attorneys cannot shirk their Rule 11 obligation to conduct an appropriate investigation into the facts that is reasonable under the circumstances by merely stating that 'the SEC alleges' certain additional facts"). Moreover, even this allegation states only that AWSC is "akin" to a partnership, not that it is a partnership. Indeed, it suggests that the relationship between AWSC and Andersen LLP was not one of "ownership."

Id. at 485 & n.23.[13] This court should reach the same result. See In re A.M. Int'l, Inc. Sec. Litig., 606 F. Supp. 600, 607 (S.D.N.Y. 1985) (dismissing allegations against "various foreign affiliates of Price Waterhouse on the theory that all the Price Waterhouse firms world-wide are in fact one entity, and acted as agents of one another"); Jeffries v. Deloitte Touche Tohmatsu Int'l, 893 F. Supp. 455, 457 (E.D. Pa. 1995) (granting summary judgment for DTTI, "a Swiss Verein that provides coordination services among its member firms, one of which is Deloitte & Touche").[14]

Plaintiffs complain that the "components of the Andersen organization ignore corporate formalities" (Cmplt. ¶ 981), but it is plaintiffs who have done just that. Recognizing that they cannot state a claim against AWSC for a primary violation of the federal securities laws, plaintiffs have ignored the legal status of AWSC. AWSC is a Societe Cooperative organized under the laws of Switzerland that has contractual relationships with professional

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[13] A more recent decision in that case held that plaintiffs could state a claim against Deloitte Touche Tohmatsu on an agency theory, but even that decision demonstrates that plaintiffs' worldwide partnership theory has no basis. The recent decision relied primarily on two facts to find that plaintiffs had stated a claim for agency liability: (1) that the audit report was signed by "Deloitte & Touche"; and (2) that the office that did the audit work, Deloitte & Touche (Bermuda), had only seven partners and that therefore "there was an understanding" that Deloitte Touche Tohmatsu would control the audit partner's work and "stood behind" the audit work. See Cromer Fin. Ltd. v. Berger, No. 00 Civ. 2284, slip op. at 3, 4, 8 (May 2, 2002) (attached as Exhibit D.) Here, of course, it was Andersen LLP that signed the audit opinion and there are no allegations – nor could there be – that plaintiffs required AWSC to "stand behind" Andersen LLP. Plaintiffs have not alleged an agency theory of liability because they cannot do so here.

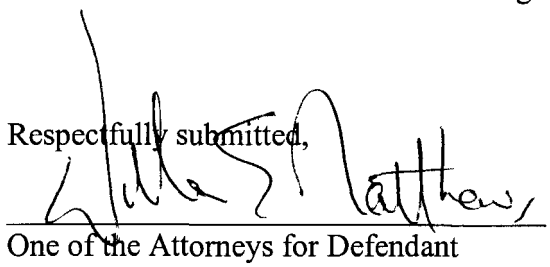
[14] A line of cases involving document production obligations confirm this analysis. See, e.g., Goh v. Baldor Elec. Co., No. 3:98-MC-064-T, 1999 WL 20943, *3 (N.D. Tex. 1999) (denying motion to compel domestic Ernst & Young to produce documents controlled by foreign Ernst & Young firm); In re Citric Acid Litig., 191 F.3d 1090, 1108 (9th Cir. 1999) (affirming denial of motion to compel Coopers & Lybrand L.L.P. to produce documents controlled by Societe Fiduciare Suisse Coopers & Lybrand). In fact, the only case involving Arthur Andersen & Co., the predecessor United States entity to Arthur Andersen LLP, explicitly held that "plaintiffs are incorrect in characterizing Andersen as a 'single worldwide partnership.'" In re DeLorean Motor Co. Litig., No. 83-CV-2137-DT, slip op. at 8 (E.D. Mich. Nov. 19, 1985) (attached as Exhibit E).

services firms; it is not a partnership. Absent an adequate allegation of partnership, which plaintiffs have not provided and cannot provide, plaintiffs cannot state a claim against AWSC. The fact that various entities share a common name – whether it be Andersen, Deloitte, or Dunkin' Donuts – and operate under common standards and policies is not sufficient to ignore their separate legal status. See, e.g, Wu v. Dunkin' Donuts, Inc., 105 F. Supp. 2d 83, 87-89 (E.D.N.Y. 2000) (citing cases). Plaintiffs' complaint should be dismissed because it fails to state a claim upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6).

CONCLUSION

For the foregoing reasons, Defendant Andersen Worldwide Societe Cooperative respectfully requests that this Court grant its motion to dismiss and enter an order dismissing the Consolidated Complaint with prejudice.

Respectfully submitted,



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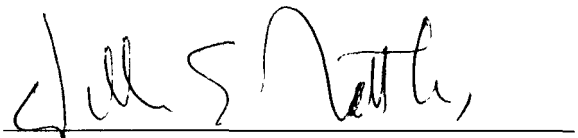
Dated: May 8, 2002

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been forwarded to all interested parties on this 8th day of May, 2002.



William E. Matthews

The Exhibit(s) May

Be Viewed in the

Office of the Clerk